

US EPA RECORDS CENTER REGION 5



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2/16/99

**UNITED STATES DEPARTMENT OF JUSTICE
FAX COVER SHEET**

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NUMBER OF PAGES (including cover sheet): 2

MESSAGE:

ALBION Consent Decree Issues

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2/16/99

Albion Consent Decree Issues

[Applicable Primarily to Settling O&M Defendants]

1. Modification of O&M Work "consistent with scope of O&M selected in the ROD"--Proposed language is: that EPA may require a modification, ... "based on sampling data subsequent to the lodging of the Consent Decree..."
2. Periodic Reviews under Sec. 121(c) of CERCLA. Proposed language states that PRPs do studies, ... "as set forth in the O&M Plan," and that obligation ends after "Certification of Completion of O&M Work."
3. Assurance of Ability to Conduct Work --PRPs may submit "another method" approved by EPA in its discretion appropriate for the action. PRPs want to state: "method(s) appropriate for this action."
4. Force Majeure - City wants to state that Settling O&M Defendants "reserve the right to assert force majeure based on failure of Settling RA Defendants to perform work 'in a good and workmanlike' manner." Settling RA Defendants unwilling to allow EPA to reserve its right to go after them for failure to do work in "good and workmanlike" manner. Query: Are we sufficiently covered by the reservation clause allowing us to pursue settlors for failure to comply with the Decree?
5. Covenant Not to Sue by Plaintiff to Settling O&M Defendants - City wants language stating:
 - a. "Except with respect to future O&M liability, the covenant becomes effective after initial payment.
..."
 - b. "With respect to future O&M liability, the covenant takes effect after Certification..."
6. RCRA Liability - City is concerned about RCRA 3008 liability. It wants a covenant for RCRA 3008, or some other language that reserves its right to raise waiver, claim splitting or estoppel defenses if EPA sues the City for RCRA operator liability.